

**BEFORE THE SECRETARY OF STATE
STATE OF COLORADO**

CASE NO. OS 2002-027

AGENCY DECISION

**IN THE MATTER OF THE COMPLAINT FILED BY ROB FAIRBANK REGARDING
ALLEGED VIOLATION OF THE FAIR CAMPAIGN PRACTICES ACT ON THE PART OF
THE COMMITTEE TO ELECT CHARLES W. CARTER**

This matter arises from a complaint filed with the Colorado Secretary of State on October 30, 2002, by Complainant Rob Fairbank. The complaint alleges a violation of the Fair Campaign Practices Act, Sections 1-45-101 to 118, C.R.S. (2002) ("the Act"). The Secretary of State transmitted the complaint to the Colorado Division of Administrative Hearings for the purpose of conducting a hearing pursuant to Section 1-45-111(2)(a), C.R.S. (2002), of the Act.

Hearing was held on February 10, 2003, before Administrative Law Judge Nancy Connick. Complainant Rob Fairbank appeared and was represented by Richard A. Westfall, Hale Hackstaff Tymkovich, LLP. Respondent appeared *pro se*. Although this proceeding was originally captioned to reflect an alleged violation on the part of Charles W. Carter, the complaint actually asserts a violation by Mr. Carter's campaign committee, the Committee to Elect Charles W. Carter, and thus the caption has been changed to more accurately reflect the complaint.

ISSUE PRESENTED

The issue presented is whether the Committee to Elect Charles W. Carter failed timely to report to the Secretary of State a contribution of \$1,000 received from Communications Workers of America Local 7777 on October 15, 2002.

FINDINGS OF FACT

1. Charles W. Carter ("Carter") was the Democratic candidate for the Colorado House of Representatives in District 22 in 2002. The Committee to Elect Charles W. Carter ("Committee") is Carter's political committee.
2. Rob Fairbank was the Republican candidate for the Colorado House of Representatives in District 22 in 2002.
3. On October 15, 2002, within 30 days preceding the general election, the Committee received a contribution of \$1,000 from Communications Workers of America ("CWA") Local 7777.

4. At the time the Committee received this contribution, Carter was unaware of the Act's requirement that he file a Notice of Major Contributor report with the Secretary of State within 24 hours of receiving any contribution of \$1,000 or more received within 30 days preceding a general election. Carter readily concedes that no such report was filed within the required time period.

5. On November 4, 2002, when Carter received a copy of the complaint filed in this matter charging that he had failed to file the Notice of Major Contributor form within 24 hours after receiving the CWA Local 7777 contribution, he filed a Notice of Major Contributor form with the Secretary of State for that contribution. The form was therefore filed 19 days late.

DISCUSSION AND CONCLUSIONS OF LAW

1. The Secretary of State has jurisdiction over complaints filed pursuant to the Fair Campaign Practices Act, Section 1-45-111(2)(a), C.R.S.

2. The Committee to Elect Charles W. Carter violated the Fair Campaign Practices Act, Section 1-45-108(2.5), C.R.S., by failing to file with the Secretary of State a report of the \$1,000 contribution it received on October 15, 2002, from CWA Local 7777 until November 4, 2002, well over the 24-hour period required for such reports when the contribution is received within thirty days preceding the general election.

3. Complainant seeks no penalty in relation to this violation of the Fair Campaign Practices Act, and the Act provides none. Section 1-45-11(2)(a), C.R.S., provides that once a violation of the Act is established, the Administrative Law Judge's decision shall include "any appropriate order, sanction, or relief authorized by this article." The issue of sanctions is addressed in Section 1-45-113(1), (2), and (4), C.R.S., but none of these subsections authorizes the Administrative Law Judge to impose a sanction for Respondent's violation of Section 1-45-108.

a. Section 1-45-113(1) imposes a criminal penalty for a willful and intentional violation of Section 1-45-108, but the Administrative Law Judge has no authority to impose a criminal penalty.

b. Section 1-45-113(2) imposes a civil penalty for violations of provisions "relating to contribution limits," but Section 1-45-108 does not relate to contribution limits.¹

c. Section 1-45-113 (4)(a) permits an "appropriate officer" to impose a monetary penalty up to \$1,000 when information required to be filed pursuant to Section 1-45-108 is late. An analysis of subsection (4), however, establishes that an administrative law judge is not an "appropriate officer" authorized to impose such a penalty. The procedure established allows a person against whom a penalty has been imposed to appeal that

¹ Section 1-45-105.3, C.R.S., specifically imposes contribution limits.

penalty and, if the Secretary of State does not reduce it or set it aside, to obtain a hearing before an administrative law judge. In such a hearing, the administrative law judge has authority to "set aside or reduce the penalty." Section 1-45-113(4)(a),(b) and (c), C.R.S. Under this procedure, the administrative law judge cannot be both the officer who initially imposes the penalty and whose action is subject to appeal and also the reviewer of his own action. In addition, the administrative law judge's authority in any such appeal is restricted. The administrative law judge may only set aside or reduce the penalty upon good cause shown. Section 1-45-113(4), C.R.S., therefore provides no authority for the Administrative Law Judge to impose a penalty for Respondent's violation of Section 1-45-108(2.5), C.R.S.

INITIAL DECISION

It is the Agency Decision that the Committee to Elect Charles W. Carter violated the Fair Campaign Practices Act, Section 1-45-108(2.5), C.R.S., by failing to file a report of its \$1,000 contribution from CWA Local 7777 with the Secretary of State within 24 hours of receipt of this contribution on October 15, 2002.

DONE AND SIGNED

February 26, 2003

NANCY CONNICK
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the above **AGENCY DECISION** was placed in the U.S. Mail, postage prepaid, at Denver, Colorado, to:

Charles W. Carter
11503 W. Tulane Place
Littleton, CO 80127-1001

Richard Westfall, Esq.
Hale Hackstaff Tymkovich, LLP
1430 Wynkoop, Suite 3000
Denver, CO 80202

and was served by interoffice mail to: William Hobbs, Department of State, 1560 Broadway, Suite 200, Denver, CO 80202, on September ____, 2003.

Secretary to Administrative Law Judge

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